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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3096 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

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2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?

No.

SHANTILAL MULJIBHAI KIKANI

Versus

G S R T CORPORATION

Appearance:

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondents

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 20/07/98

ORAL JUDGEMENT

Rule. Mr. Y.S.Lakhani learned advocate for the

respondents waives service of notice of Rule.

2. Petitioner-Shantilal Muljibhai Kikani was working as a conductor at Savarkundla depot. On 29.6.1994, he was dismissed from service and an application u/s 33(2)(b) of the Industrial Disputes Act for obtaining consent for the said dismissal was filed by the respondent - corporation before the Assistant Commissioner of Labour to give approval for the said dismissal. Said application was rejected by the Assistant Commissioner of Labour by his order dated 17.10.1984. Thereafter present applicant had raised an industrial dispute for his wrongful dismissal on account of which a reference being Reference No.23 of 1994 was made to the Labour Court, Bhavnagar. In the meantime the respondent corporation had filed SCA No. 1085 of 1985 to challenge the order passed by the Assistant Commissioner of Labour on 17.10.1984. When the said reference preferred by the present petitioner came up before the Labour Court, the parties had arrived at a settlement. The respondent corporation had agreed to reinstate the petitioner subject to the conditions that the parties should abide by the final decision in SCA No. 1085 of 1985. Present petitioner also agreed to the said condition. Accordingly he was reinstated on 7.6.86 on condition that both the parties should abide by the decision in SCA No. 1085 of 1985.

3. Said SCA No.1085 was dismissed on 12.7.96. Thereafter present petitioner approached the respondent corporation to give him arrears of pay for the period running between 29.6.84 and 7.6.1986. As the said claim of the petitioner has been rejected the petitioner has come before this court.

4. Admittedly, present petitioner was dismissed on 29.6.84 without holding a departmental inquiry and approval of the same was sought under section 32(2)(b). Said approval application was rejected for non compliance of the provisions of section 32(2)(b). Consequently, said dismissal is invalid and illegal. In view of the same the industrial dispute raised by the present petitioner which has resulted into Reference. 23 of 1984. But because of the filing of the said SCA No. 10185 of 1985, said reference could not be decided. No doubt said reference No. 23 of 1984 was dependent upon the result of SCA No. 1085/85 preferred by the present respondent. Therefore, in view of these circumstances, the parties had arrived at a settlement and parties had agreed to abide by the decision of the SCA No. 1085 of

1985. Admittedly said SCA No.11085/85 has been dismissed by the learned single Judge of this Court and said order passed by the learned single Judge was not challenged by preferring any LPA or other proceedings. Thus said decision of the learned single Judge has become final. Now when said decision has become final it is obvious that dismissal of the present petitioner has become illegal and consequently the reference made by him could have been decided in his favour. But in view of the settlement between the parties, the parties were to act as per the decision in SCA No.1085 of 19985. Therefore, in view of the said agreement present respondent corporation ought to have paid back wages to the petitioner for the period running between 29.6.84 and 6.6.86 when he was reinstated on 7.6.86. Therefore, I hold that present petition will have to be allowed and the same is accordingly allowed. The respondents are ordered and directed to pay arrears of wages from 29.6.84 to 6.6.86(both days inclusive) within 8 weeks from the date of receipt of the writ of this court. Rule is made absolute. No order as to costs.

(S.D.Pandit.J)